

STATE OF MICHIGAN
COURT OF APPEALS

KARTER LANDON,

Petitioner-Appellant,

v

CITY OF FLINT,

Respondent-Appellee.

UNPUBLISHED

May 24, 2012

Nos. 301802, 301832, 301905,
301919¹

Tax Tribunal

LC Nos. 00-339811, 00-339814,
00-339813, 00-339812

Before: FITZGERALD, P.J., and MURRAY and GLEICHER, JJ.

PER CURIAM.

Petitioner Karter Landon owned four parcels of residential property in the city of Flint, which he used as rental units. Landon challenged the City's assessment for taxation purposes of his properties' true cash values (TCVs), claiming that the condition of the homes and neighborhoods reduced the properties' values. Calculating the cost of the properties less depreciation of the homes, and adjusting the values to reflect local sale trends, the Michigan Tax Tribunal (MTT) Small Claims Division assigned property values consistent with the City's evidence. We vacate the MTT's valuations in Docket Nos. 301802 and 301919 because the administrative law judge (ALJ) adopted figures based on incorrect depreciation rates. We vacate the MTT's valuation in Docket No. 301832 because the ALJ failed to cite any evidence to support its assigned TCV. We remand in those matters to allow the MTT to correct the noted errors. We affirm the MTT's judgment in Docket No. 301905 as Landon failed to meet his burden of proof to challenge the assessed value of the property.

I. BACKGROUND

Landon is the sole shareholder of Bossman Investments, Inc., a corporation through which he purchases real estate to use as rental properties. At issue in this case are four residential properties that Landon purchased in 2006 in the city of Flint.

¹ This Court consolidated petitioner's appeals by order. *Landon v City of Flint*, unpublished order of the Court of Appeals, entered January 19, 2011 (Docket Nos. 301802, 301832, 301905, 301919).

A. Docket No. 301802 - 2401 Arlington

On October 31, 2006, Landon purchased 2401 Arlington for \$7,925 in cash. Two months later, the City appraised the home for taxation purposes. Using the cost-less-depreciation approach,² the City calculated the current cost to rebuild the home. Applying a 50% depreciation rate and considering the “economic condition factor,”³ the City reduced the property’s TCV to \$41,000. Landon petitioned the City’s Board of Review (BOR),⁴ which affirmed the valuation. Thereafter, the City assessed the Arlington property as having a \$37,000 TCV in 2008, and a \$33,400 TCV in 2009. For all three years, the City levied taxes against the property based on 50% of its appraised TCV, i.e. at its state equalized or taxable value. See MCL 211.27a.

Landon appealed the 2007-2009 assessments to the MTT, claiming that the property’s TCV was much lower than assessed. He claimed that the home was in deplorable condition and sat in a neighborhood full of abandoned houses subject to vandalism and crime. Before a hearing referee, Landon presented a recorded tour of the home. He presented evidence of “comparable” properties, including many foreclosed homes, which had sold for between \$4,000 and \$11,000. Landon also produced a “Temporary FAAR Residential Search” showing 1,991 residential properties that had sold in the city of Flint between 2006 and 2009, ranging in price from \$1 to \$9,000.⁵ The City, on the other hand, presented three properties from the subject

² Under the cost-less-depreciation approach, the assessor estimates the land’s value and “the current cost of reproducing or replacing” any improvements to the land, such as structures and utilities. The assessor then reduces the overall value by the rate of depreciation caused by “physical deterioration and functional or economic obsolescence.” *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004).

³ As described in 3 Mich State Tax Comm Assessor’s Manual, p 14-1:

When appraising a mass of properties, the assessor frequently uses a cost-less-depreciation analysis and relates it to what properties are selling for through the use of an Economic Condition Factor (ECF). The ECF is derived by analyzing properties which have sold and comparing the cost less depreciation of the buildings to that portion of the sale prices attributable to those buildings.

Pursuant to MCL 211.10e, local assessors “shall use only the official assessor’s manual . . . as a guide in preparing assessments.”

⁴ Upon the request of a taxpayer and on “sufficient cause [] shown,” the BOR must “correct the assessed value” of property “in a manner that will make the valuation of the property relatively just and proper” MCL 211.30(4).

⁵ FAAR stands for the “Flint Area Association of Realtors.” From its website at <http://www.flinthomes.net>, FAAR’s members can conduct advanced home listing searches.

Landon did not assert that no homes in the city of Flint had sold for more than \$9,000 during the relevant time period. Rather, he simply limited his search to sales at or below that value.

neighborhood and a contiguous area with an average adjusted sale price of \$33,197. The City agreed that its original assessment was too high, but did not agree that the value was as depressed as suggested by Landon. Upon further evaluation of 2401 Arlington under a cost, direct-sales comparison, and income approach, the City recalculated the property's 2007 TCV as \$34,000, 2008 TCV at \$31,000, and 2009 TCV as \$28,000.

The MTT hearing referee accepted the cost-less-depreciation model as the "most reliable indicator of the property's [TCV]." The referee discounted Landon's evidence of comparable sales because they "were all foreclosure sales," "were not adjusted to the subject property," and "were not exposed to the market in the usual manner." The referee also discounted Landon's attempts to establish sales trends through "paired data analysis" because Landon's narrow sample was insufficient to prove the asserted points.⁶ The referee found Landon's list of 1,991 properties sold in the city "interesting but not helpful in determining the TCV of the subject property" as "[n]one of the properties was adjusted to the subject property and no proximity to the subject property was indicated."

The referee did find, however, that the City should have further depreciated the home's value based on its age and State Tax Commission guidelines. Specifically, the referee concluded that the home was in only 45% good physical condition, rather than 50% as determined by the City. As a result, the referee adjusted the TCVs presented into evidence by the City to \$32,244 in 2007, \$29,342 in 2008, and \$26,408 in 2009.

Landon challenged the referee's findings and the case proceeded before ALJ Victoria Enyart. The ALJ concluded:

All of the comparables utilized by [Landon] were foreclosure or distressed sales. Although foreclosures, bank sales, sheriff sales, etc. can be considered in the valuation of property, [Landon] failed to properly demonstrate that the sales he offered in support of his contentions were subject to normal market pressures. Further, the record lacks any information regarding competing offers or typical motivations. While [Landon] did provide the MLS sheets for the comparables, which indicates the original listing date and the sale date, there is not sufficient information as to the condition of the properties at the time of sale.

The ALJ also rejected the referee's changed depreciation rate, as Landon indicated that the "property was in decent rentable condition when purchased." Based on the comparable properties presented by the City, the ALJ accepted the City's statements regarding the proper assessment for the property.

⁶ Basically, Landon compared properties that had previously sold in the area to show how certain property characteristics, such as basements and square footage, affected the overall sales price of a home. Landon analyzed only one pair of properties for each characteristic and thereby failed to reach statistically reliable conclusions.

Dissatisfied with the ALJ's ruling, Landon sought reconsideration. The ALJ granted the motion but affirmed her earlier opinion and order. The ALJ denied Landon's claim that she was prejudiced against him. The ALJ noted that although the home was an income-producing property, Landon had not presented any evidence that the property's condition affected his profit. The ALJ highlighted Landon's internally inconsistent arguments, wherein he admitted that the home was habitable enough to rent to tenants but claimed it was not habitable enough to pass a home inspection. The ALJ further accused Landon of favoring quantity over quality, noting that the 1,991-item list of sold properties "provided significant amounts of raw data" but included "little detail and even less reliable and supportable analysis." After reviewing the recorded tour of the house, the ALJ noted that Landon falsely claimed that the home did not have central air conditioning. She characterized the house as needing maintenance and repair, but no problems that would affect the level of depreciation.

On reconsideration, the ALJ did agree that two of the City's proffered comparable properties were too dissimilar to determine the proper valuation of the current property. However, based on the City's original cost-less-depreciation analysis and its newly recommended adjustments to "reflect localized sales trends of similarly situated properties," the ALJ accepted the City's calculations.

B. Docket No. 301832 - 1610 Illinois

Landon purchased 1610 Illinois on December 30, 2006, for \$6,000 in cash. Using the same appraisal method applied to 2401 Arlington, the City assessed the property as having a TCV of \$36,600 in 2007. Landon again petitioned the valuation to the BOR, which affirmed. The City assessed the home's TCV as \$36,600 in 2008, but reduced the TCV to \$32,200 in 2009. Landon appealed the assessments to the MTT. He again presented a recorded tour of the home and evidence of "comparable" properties, many of which had been sold at foreclosure sales. Landon also produced the extensive list of properties sold within the city during the time in question. The City offered three comparable properties with an average adjusted sale price of \$22,793. Upon further evaluation of 1610 Illinois under a cost, direct-sales comparison, and income approach, the City recalculated the property's 2007 and 2008 TCVs as \$23,000 and 2009 TCV as \$20,200.

The hearing referee accepted the cost-less-depreciation model as the "most reliable indicator of the property's [TCV]," but again discounted Landon's comparable sales evidence. Despite that the City's comparable properties were all land contract sales, the referee accepted the evidence as sound proof of the property's value. Without explanation, the referee further reduced the property's TCVs to \$21,800 in 2007 and 2008, and \$19,180 in 2009.

Landon objected and this case proceeded before the ALJ as well. The ALJ questioned Landon's methods of adjusting the comparable properties' values to reflect differences with the subject property. The ALJ continued to discount Landon's evidence of sales following foreclosures. The ALJ rejected the referee's unsupported alteration of the 2007 TCV. The ALJ reviewed the City's proffered comparable properties and determined that a 1,352-square-foot home on Indiana was the most similar to Landon's property. Specifically, the ALJ determined that the Indiana property was in the same neighborhood and its value had been accurately adjusted to reflect differences in construction class, age, square footage, and porch and garage

styles. That property had an adjusted sale price of \$18,800. Accordingly, the ALJ determined that the Illinois property's 2007 and 2008 TCVs should have been set at \$18,800 and the 2009 TCV at \$16,600. The ALJ thereby reached a conclusion even more favorable to Landon than either the City or the hearing referee recommended.

Dissatisfied with the ALJ's ruling, Landon sought reconsideration. The ALJ granted the motion and again denied Landon's claim that she was prejudiced against him. She continued to note Landon's failure to produce any evidence that the home's condition affected his ability to earn rental income. The ALJ reviewed the recorded home tour and opined that the home was dirty and needed cosmetic repairs, but was not so damaged as to require a larger depreciation factor. The ALJ did agree, however, that the City's proffered comparable properties were dissimilar enough to require additional adjustment to the calculated TCVs. The ALJ then increased the TCVs provided in her original opinion to \$21,700 in 2007 and 2008, and \$19,000 in 2009. Yet, the ALJ provided no explanation for her additional adjustment to the property's value.

C. Docket No. 301905 - 1722 Indiana

Landon purchased 1722 Indiana on July 18, 2006, for \$8,200 in cash. The City assessed the home as having a \$36,200 TCV in 2007 and 2008 and a TCV of \$31,800 in 2009. Landon's petition to the BOR was again unsuccessful. On appeal to the MTT, Landon again presented a recorded tour of the home, evidence of "comparable" properties, many of which had been sold at foreclosure sales, and the extensive list of properties sold within the city during the time in question. The City presented three comparable properties with an average adjusted sale price of \$19,995. Upon further evaluation of the Indiana Street house, the City recalculated the property's 2007 and 2008 TCVs as \$20,000 and 2009 TCV as \$17,600. Once again, the hearing referee discounted Landon's proffered valuation evidence and accepted the City's recalculated assessments of the property's value.

In answer to Landon's objections, the ALJ found that the City's comparables best reflected the property's "decreased value[]" in the "declining market" and "neighborhood condition." The ALJ then affirmed the hearing referee's value assessments. The ALJ reaffirmed her conclusions following Landon's motion for reconsideration.

D. Docket No. 301919 - 2208 N. Vernon

Landon purchased 2208 N. Vernon on October 25, 2006, for \$4,500 in cash. The City assessed the property as having a TCV of \$34,600 in 2007, \$31,200 in 2008, and \$28,000 in 2009. Before the MTT, the City presented evidence that altered its recommended valuation of the property to \$25,000 in 2007, \$22,600 in 2008, and \$20,400 in 2009. The hearing referee ultimately concluded, "It is apparent that the subject property had additional physical depreciation. The property record card shows physical depreciation at 50.0% good, which is higher than the typical maximum of 45.0% good recommended by the State Tax Commission for habitable property nearing the end of its useful life." Accordingly, the referee recommended reducing the "depreciated cost of the building [to] \$33,437," and the TCVs to \$21,188 in 2007, \$19,280 in 2008, and \$17,352 in 2009.

Landon objected to the referee's proposed opinion and the matter proceeded before the ALJ. Once again, the ALJ discounted the comparable properties and comparison analysis presented by Landon. The ALJ faulted the referee for adjusting the depreciation rate applied to the property as Landon specifically indicated "that the subject property was not in rough condition or in need of extreme repairs when purchased." Based on the original depreciation rate, the ALJ accepted the City's revised TCVs of \$25,000 in 2007, \$22,600 in 2008, and \$20,400 in 2009. On reconsideration, the ALJ further reviewed Landon's proffered comparable properties and agreed to reduce the TCVs to \$23,100 in 2007, \$20,850 in 2008, and \$18,700 in 2009. Specifically, the ALJ determined:

While some of [the City's] sales data appears to support a slightly greater TCV than the cost approach, given the evidence provided by the parties and the facts of this case, the [MTT] cannot support a TCV in excess of the revised cost less depreciation calculation, or roughly \$23,100 for 2007. This revised cost approach takes into account a number of [Landon's] concerns with comparable sales as well as the condition and finish of the subject property.

II. CAPACITY TO SUE

The City challenges Landon's capacity to attack the tax assessment in his own name before the Court of Appeals. The City notes that the properties are titled in the name of Bossman Investments, Inc. and contends that if the properties are owned by the corporation, Landon, who is not a lawyer, may not represent the corporation's interests in a court of law.

It does appear from the record documents that Bossman Investments, Inc. is the named owner of the Flint properties. However, in the companion appeal of *Landon v Mt. Morris Twp*, this Court rejected the Township's pre-oral argument bid to dismiss Landon's appeal even though the properties are owned in Bossman's name. *Landon v Mt. Morris Twp*, unpublished order of the Court of Appeals, entered February 17, 2011 (Docket No. 301986). This Court thereby permitted Landon to pursue that appeal *in propria persona*. We will not reach an inconsistent conclusion in these consolidated appeals.

Further, this Court already precluded Landon from appealing an MTT decision on behalf of Bossman. In *Bossman Investments, Inc v City of Flint*, unpublished order of the Court of Appeals, entered March 23, 2009 (Docket No. 289339), this Court dismissed Bossman's appeal as Landon, who is not a licensed attorney, filed suit *in propria persona* on behalf of the corporation. Accordingly, Landon, acting on his own behalf, could not pursue these consolidated appeals in the name of his corporation.

III. STANDARD OF REVIEW

Absent an allegation of fraud, we review an MTT decision "for misapplication of the law or adoption of a wrong principle." *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 76; 780 NW2d 753 (2010). We must accept the MTT's factual findings as conclusive if supported by "competent, material, and substantial evidence on the whole record." *Id.* (quotation marks and citation omitted). "Substantial evidence is the amount of evidence that a reasonable person

would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence.” *Wayne Co*, 261 Mich App at 186-187.

We review underlying issues of statutory interpretation de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Our ultimate goal is to discern the intent of the Legislature based on the statutory language. *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008). “When the language of a statute is unambiguous, the Legislature’s intent is clear, and judicial construction is neither necessary nor permitted.” *Id.* When the statutory language allows for alternative reasonable interpretations, however, we must employ the tools of statutory construction to accomplish the legislative intent. *Chop v Zielinski*, 244 Mich App 677, 680; 624 NW2d 539 (2001).

IV. ANALYSIS

On appeal, Landon continues to challenge the TCVs assessed by the City and the MTT, citing the poor conditions of the properties and the overall collapse of the surrounding area. TCV is defined in the general property tax act, MCL 211.1 *et seq.* as follows:

As used in this act, “true cash value” means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller’s assets in a bankruptcy proceeding or if the seller is unable to use common marketing technique to obtain the usual selling price for the property. . . . [MCL 211.27(1).]

“[TCV] is synonymous with ‘fair market value.’” *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007). The assessed TCV must “reflect the probable price that a willing buyer and a willing seller would arrive at through arm’s length negotiation.” *Id.* The petitioner, not the taxing authority, bears the burden of establishing the property’s TCV. MCL 205.737(3).

“The [MTT] is under a duty to apply its expertise to the facts of a case to determine the appropriate method of arriving at the [TCV] of property, utilizing an approach that provides the most accurate valuation under the circumstances.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). “The three most common approaches to valuation are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach.” *Id.* “[V]ariations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to fair market value.” *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 390; 576 NW2d 667 (1998). In determining “the most accurate valuation under the individual circumstances of the case,” the MTT is “not bound to accept” either party’s valuation theory and must make an “independent determination of [TCV].” *Id.* at 389-390, 399. Determining a property’s TCV “is

not an exact science;” it involves many judgment calls and “reasonable approximation.” *Id.* at 398.

Landon used a sales-comparison approach to calculate the properties’ TCVs and the City presented a modified sales-comparison analysis to rebut Landon’s evidence. The sales comparison method:

requir[es] an analysis of recent sales of similar properties, a comparison of the sales with the subject property and adjustments to the sales prices of the comparable properties to reflect differences between the properties It has been described as the only approach that directly reflects the balance of supply and demand for property in marketplace trading. [*Id.* at 391 (citations omitted).]

The MTT did not misapply the law or adopt a wrong principle in choosing a method by which to value Landon’s properties. “It is the [MTT’s] duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.” *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). The MTT employed the cost-less-depreciation method to value the properties and then adjusted the values based on a sales-comparison analysis. These are both valid, market-based tools to assess property values. See *Jones & Laughlin Steel Corp*, 193 Mich App at 353. The MTT’s valuation methodology was not invalid simply because the properties did not assess at Landon’s purchase prices. As provided by MCL 211.27(5), “the purchase price paid in a transfer of property is not the presumptive [TCV] of the property transferred.”

The MTT also acted within its authority in discounting Landon’s evidence regarding the value of his properties. The weight to be accorded the evidence was within the MTT’s sole discretion and we may not second-guess its judgment in that regard. *Great Lakes Div*, 227 Mich App at 404. The majority of the comparable properties presented by Landon were sold after public and private foreclosures. He did not attempt to establish that such forced sales had “become a common method of acquisition” in the area as required for MTT consideration by MCL 211.27(1). Moreover, as noted by the MTT, Landon employed faulty reasoning in comparing other properties to his own. And, after viewing the recorded tours of the homes, the MTT had adequate information to determine that Landon exaggerated the residences’ conditions.

However, the MTT’s valuations of the properties at 2401 Arlington and 2208 N. Vernon were not completely supported by competent, material, and substantial record evidence. Specifically, the hearing referee accurately determined that the city assessor had applied the wrong depreciation factor to those home values, but the ALJ overruled those portions of the referee’s proposed opinions. “Depreciation is a loss of utility and therefore of value from any cause.” 3 Assessor’s Manual, p 13-1. The Assessor’s Manual includes depreciation tables and the “State Tax Commission requires [their] use . . . to maintain uniformity and continuity of assessment administration appraisals in Michigan.” *Id.* at 13-4. To promote equal treatment, assessors are directed to deviate from the depreciation tables only under extraordinary conditions. “Frequently, remodeling is extensive enough to eliminate some of the physical depreciation and the normal obsolescence” in older homes. *Id.* at 13-6. Both the Arlington and N. Vernon houses were more than 80 years old during the 2007 appraisal. Pursuant to 1 Michigan State Tax Comm Assessor’s Manual, pp 23-24, such older residences are considered to

be in 45% good physical condition, meaning that it has “[m]arked deterioration, [is] rather unattractive and undesirable but [is] still quite useful.” The ALJ noted that someone had installed central air conditioning since the home at 2401 Arlington was built. However, the ALJ made no record analysis of whether either home was so remodeled that it was necessary to deviate from the depreciation tables. Accordingly, in Docket Nos. 301802 and 301919, we vacate the MTT’s opinion and order and remand for entry of TCVs calculated using the correct depreciation level.

We also vacate the MTT’s valuation of 1610 Illinois in Docket No. 301832. We cannot determine from the record whether the ALJ’s ultimate valuation judgment is supported by competent, material, and substantial record evidence. The ALJ simply noted that neither party’s evidence was conclusive and additional adjustment was necessary to compare the City’s proffered properties to the subject. The ALJ did not explain why additional adjustment was required. She also did not delineate how she adjusted the comparable property’s value. Instead, she assigned a new TCV without explaining the calculation. Accordingly, we vacate the MTT’s judgment and remand for assignment of a TCV based on competent, material, and substantial evidence which is cited on the record.

We otherwise affirm the MTT’s valuation judgments. Landon bore the burden of establishing the value of the real property. He did not challenge the City’s calculation of the properties’ replacement or reproduction costs under the cost-less-depreciation method. Rather, he challenged the City’s and MTT’s analysis of market value in the depressed community. The MTT viewed the evidence and calculated values accordingly. Given the deference we afford the MTT’s factual determinations, we affirm the MTT’s valuation in Docket No. 301905 and do not question its judgments in Docket Nos. 301802, 301832, and 301919 beyond our concerns explicitly stated in this opinion.

Docket No. 301905 is affirmed. Docket Nos. 301802, 301832, and 301919 are vacated and remanded to the MTT for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Elizabeth L. Gleicher